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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,331	05/02/2005	Masako Yamaki	KNI-202-A	5140

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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3723

NOTIFICATION DATE	DELIVERY MODE
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10/13/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/533,331	Applicant(s) YAMAKI, MASAKO	
	Examiner Randall Chin	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 2-7 and 11-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8-10 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05022005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 2-7 and 11-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 15 July 2009.
2. Applicant's election with traverse of Specie 10 (Fig. 11), claims 1, 8-10 and 19, in the reply filed on 15 July 2009 is acknowledged. The traversal is on the ground(s) that the claims of the present invention are directed to related aspects of a single invention, and that the species do not lack unity of invention because they are so linked as to form a single general inventive concept. Applicant further asserts that the Examiner does not appear to understand a basic idea behind Restriction practice, which is that two or more inventions are being claimed in a single application. Applicant also cites Section 803 of the MPEP, as well as various other sections under Chapter 800, relating to when Restriction requirement is proper.

This is not found persuasive because Applicant is reminded that the instant application was filed as a national stage application under 35 U.S.C. 371 where unity of invention rules during the national stage rules apply **without regard to the practice in national applications filed under 35 U.S.C. 111 (MPEP 1850, I. ; see also 37 CFR § 1.475 and MPEP 1893.039d)**. Accordingly, cited Section 803 of the MPEP, as well as various other cited sections under Chapter 800, relating to when Restriction requirement

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is proper, are not relevant here in the instant national stage application. Again, in the instant case, the species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The special technical feature in all groups/species is a cleaning arrangement including a case, a brush provided in the case, and a liquid retaining member in the case. This element is not deemed a special technical feature among the groups because these elements are taught in the prior art. U.S. Patent No. 3,135,987 to Huch teaches in Figs. 3 and 4 a cleaning arrangement including a case 8, a brush 26 provided in the case, and a liquid retaining member 42 in the case (col. 2, lines 68-71 and col. 3, lines 13-18). The recitation of cleaning earwax from a hearing aid merely involves intended use. Therefore, there is a lack of unity because there is not a corresponding special technical feature that defines a contribution over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

3. Claim 8 is objected to because of the following informalities:

Claim 8, line 3, the recitation of "a case" again here makes the claim language awkward and makes it appear there is a double inclusion of elements with "a case" recited back in claim 1, line 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 8-10 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. 5,732,435 (hereinafter Williams).

As for claim 1, the patent to Williams discloses in Figs. 1-3, for example, a device 10, comprising a receptacle or case 12, and a brush 42 provided in the case. As for the device being for removing earwax which adheres to a signal outputting portion of a hearing aid, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As for claim 8, the case 12 further comprises a case body and a cap or lid 34, and the brush 42 is provided in the case body (Figs. 2 and 3).

As for claim 9, the anti-slip member 30 is provided on a bottom surface of the case body (Fig. 1).

As for claim 10, there is an anti-slip member 30 (col. 4, lines 31-38) provided on a peripheral surface (e.g., on front wall 28 in Fig. 2) of the case body.

As for claim 19, the patent to Williams discloses in Figs. 1-3, for example, a device 10, comprising a receptacle or case 12, a brush 42 provided in the case, and an

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anti-slip member 30 provided on an outer surface of a portion of the case (Figs. 1 and 2; col. 4, lines 31-38). As for the device being for removing earwax which adheres to a signal outputting portion of a hearing aid, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Logan, Stoltzman, Galizia, Rocha, Johnson, and Andrews are relevant to various anti-skid arrangements and Huch, Revan, and Larsen are relevant to various case arrangements with brushes.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randall Chin/
Primary Examiner, Art Unit 3723